

PERFILI -v- REGINAM

High Court of Solomon Islands

(Palmer PJ)

Criminal Case No. 30 of 1992

Hearing: 1 September 1992

Ruling: 2 September 1992

T. Kama for Applicant

DPP for the Respondent

PALMER PJ: The applicant has been charged with loading and exportation of goods without proper authority contrary to section 136(1)(c) of the Customs and Excise Act and illegal entry to Solomon Islands contrary to section 6(1) of the Immigration Act.

He was arrested and charged on or about the 20th of August 1992 at Afutara, Malaita and later taken to Honiara. He was brought before the Central Magistrates Court on the 21st of August 1992 and remanded in custody for 7 days. On the 28th of August he was further remanded for another 14 days.

The applicant now applies to be admitted to bail under section 106(3) of the Criminal Procedure Code.

The main grounds for the application are as set out in page 3 at paragraph 10 of the affidavit of Mr Kama.

The grounds are as follows:-

- (i) That the charge is not a serious charge and the circumstances of its commission was not aggravated to continue to cause any serious threat to resources of this country.

- (ii) That the applicant has a right to bail unless it could be shown otherwise.
- (iii) No more serious charges than the present charge could be made against him.
- (iv) That the applicant has to attend to business interests in Australia and Solomon Islands.

The main grounds of objection raised by Prosecution are that the investigation has not yet been properly completed and that there is a strong possibility of interference with evidence and witnesses of the Crown.

The Prosecution also pointed out that there are some senior members of the Government including a Minister of the Crown who appear to be involved and are still being investigated.

It was also pointed out that there are other more serious charges that are being considered and which could be laid against the applicant as well.

On the question of seriousness of the charges, I accept that the charges are not that serious. The circumstances surrounding the commission of those offences however may give rise to more serious charges, but at this stage it has not been made known yet what those are.

The offences that this applicant has gotten involved in, involved the use of an aircraft with its pilot who defied, it seems all known lawful authorities to enter into this country and landed obviously at a planned rendezvous at a remote area in Malaita. This blatant disregard and disrespect would seem to be serious in itself.

There are other local people clearly implicated in the operation, including a Minister of the Crown and some businessmen.

Prosecution has also pointed out that they are investigating how the aviation fuel was taken to Afutara.

Clearly the extent of the operation indicates the involvement of a number of people. Their due apprehension by Police is important in the interests of justice.

Although I am satisfied that if the applicant is released on bail he will not abscond there are other factors that this Court is entitled to consider.

One of these and the main one raised by Prosecution is the possibility of tampering with evidence and interference with prosecution witnesses and investigation.

If the applicant is released on bail there is no guarantee that he will not contact his associates. But even if he does not communicate with any prosecution witnesses and any of his associates, there is nothing to prevent those people from communicating with him. This is more so where police are still investigating and have not yet laid charges. The pressure on such people to interfere with the police investigation by communicating with this applicant if released on bail is a real possibility especially where there are senior government officials and businessmen involved and as has been raised by the learned Director of Public Prosecutions that the links overseas too raise some concern. He has alluded to contacts in Nigeria, United States of America and Australia. There would obviously have to be a wider link to enable the movements of the aircraft to come in and go out secretly of the country and to have the birds disposed of overseas.

Mr Kama has indicated that if released on bail the applicant could reside with a businessman in Honiara, Wolfgang Meiners, who could also act as a surety.

Unfortunately, this same businessman is wanted by police for questioning, but coincidentally is currently out of the country and it is not yet known when he would return if at all. So that suggestion in reality is worth little.

It has been pointed out too that this applicant came into the country on a visitor's permit and that it expired on the 31st of August 1992.

It was pointed out that this applicant was on a business trip and had been making enquiries with the Foreign Investment Board and had gotten in touch with 2 accountant firms, when he got involved with this case.

The learned Director of Public Prosecutions however has pointed out that from evidence he has it appears that this applicant did make an appointment to see an accountant firm but that on that very day he should have done, he was at Malaita.

This could be seen as a means to divert attention and would indicate careful planning and thought been applied to ensure that his activities do not raise any suspicions.

In such a short time this applicant has gotten involved in such an operation which appears to be carefully planned and co-ordinated. It is obviously in the interests of justice that police are allowed the opportunity to investigate all avenues and sources, links and persons properly and that no possibility of interference is permitted.

The learned Director of Public Prosecutions has indicated that he is only looking for remand up until the 10th of September and that after that investigations should be completed and he would not object further to any satisfactory bail terms. I am satisfied this is a case appropriate for remand to be further extended to that date as granted by the learned Magistrate.

One other matter that should be raised here, is the issue about the status of the visitor's permit of this applicant. His permit expired on the 31st of August 1992.

But for this case, he would either have left the country voluntarily before that date or been asked to leave. Obviously, the

Immigration authorities would be interested in ensuring that this applicant leaves the country immediately after his case is dealt with.

To release the applicant on bail at this stage would not be appropriate especially where even with the very limited rights and privileges granted to him, they have it seems been misused.

Application for bail is denied. However, a fresh application may be made before the Central Magistrates Court on the 10th of September 9 a.m. for bail.

It has been raised that the applicant has been denied the use of telephone services altogether. I will direct that the prison authorities allow this applicant to use the telephone to contact his family in Australia and his Solicitor there as well, provided it is at his own expense and that a prison officer is within earshot of the accused during the call.

Obviously his contacts with people in Honiara would be restricted. He would be entitled to get in touch with his Solicitor here, and allowed all the rights of an unconvicted prisoner in-respect of visits from relatives or from the Australian High Commission.

(A. R. Palmer)  
PUISNE JUDGE